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Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1972

No. 71-1688

JEAN D. MUIRHEAD,
Petitioner,

vs.

HINDS COUNTY DEMOCRATIC EXECUTIVE COMMITTEE,
JOHN HULSEBOCH, Successor to J. M. DITTO,
Respondents.

Brief in opposition by Respondent

BRIEF IN OPPOSITION ~~REPLY~~

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI
To The Supreme Court of The State of Mississippi

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BRIEF IN OPPOSITION-REPLY

STATEMENT OF THE CASE

Petitioner states in her statement of the case that the Democratic Executive Committee refused to place Petitioner's name on the 1971 Democratic ballot on the ground that she failed to complete a form submitted to her by the Committee. We wish to correct this statement. The United States District Court enjoined the Respondents in **Charles Evers, et al vs. State Board of Election Commissioners** to hold the election under the laws in force and effect on November 1, 1964.

Section 3107-5 Code of 1942 (Exhibit A hereto) was in effect on November 1, 1964, and provides that any person who has not been in accord with the party holding the primary within the last two preceding years or any part thereof shall be barred from participating in such primary.

The petitioner testified on page 43 as follows:

"Governor, as I recall, about two years ago, I held a press conference in which I made the statement that when and if I sought re-election, I intended to do so as a Republican."

She then testified: (lines 9 to 12, p. 44 of Record)

Q. "Well now was that your intention from then on for how long?

A. It was my intention at that point.

Q. When did you change your mind?

A. I haven't changed my mind."

The questionnaire sent to petitioner by the respondents to be signed by her contained the statement:

"And have not violated Section 3107.5."
(Page 50 of the Record)

Petitioner was then asked:

"I did not complete it and return it," referring to the questionaire sent her by the Committee (R 50).

Q. "Did you attend the regular party meeting for Vice-president Agnew?

A. Yes sir.

Q. When was that?

A. There have been two dinners here in the past couple of years and I have been to both of them.

Q. Did you go as a Republican or a Democrat?

A. As a Republican."

Then on page 54 of the Record she testified:

Q. "Were you recognized at the meeting?

A. Yes sir.

Q. As a Republican Senator?

A. Yes sir."

In her letter of June 23, 1971, she stated:

"Since I will not be on the August ballot, will you kindly return my $15.00. Thank you for your co-operation" (R 39).

Petitioner qualified as the Republican nominee on June 25, 1971 (R. 59) and on pp. 63 and 64 testified that under the law there was nothing to prevent her from being on both ballots.

It is clear from the evidence that petitioner did not meet the qualifications for a Democratic candidate under 3107-5 but proves that she was barred as a candidate by Section 3107-5 by her own testimony.

DECISIONS CITED BY PETITIONER AS REASONS FOR GRANTING THE WRIT

The decision in **Allen vs. State Board of Elections, 393 U. S. p. 544, 89 S. Ct. 817,** cited by the petitioner has no application here. In that case the question to be decided was whether the state enactment was subject to the voting rights act of 1965 and required to be submitted for approval. In the case at bar the District Court held in **Evers et al vs. State Board of Election Commissioner, 327 T. Supp. 640** that the submission had not been approved by the Attorney General and that the laws in effect on November 1, 1964, were the standard and enjoined the commission to proceed under the laws in effect on November 1, 1964, and this the commission did.

Estes vs. State of Texas, 381 U.S. 532, 85 A.S.C. 1628 where defendant was tried and convicted of swindling and it was held that he was deprived of due process of law because the hearing was televised live and repeated on tape in the same evening reaching approximately 100,000 viewers and the Courtroom was a mass of wires, television cameras, microphones and photographers. There is no comparison in that case with the case at bar. Here there were no cameras, microphones, photographers, etc. and no outside influence. It has no application here.

Petition cites **Giascio vs. State of Pennsylvania, 382 U.S. 399, 86 S. Ct. 518.** This is a case where the jury imposed costs on defendant acquitted of a misdemeanor charge and the Supreme Court held same to be a violation of due process because of vagueness and absence of any standard sufficient to enable defendants to protect themselves against arbitrary and discriminating impositions of costs. The case has no application here.

In **Glosser vs. U.S. 315 U.S. 60, 62 S. Ct. 457,** an Illinois statute made women eligible as jurors effective on July 1, 1930, and the grand jury which presented the indictment

was summoned on August 25, 1930, was composed of men only, and it was not shown that women's names had yet appeared on state jury lists. The Court held it was no error to omit names of women jurors from federal jury lists even though **28 U.S.C. Section 411, 28 U.S.C.A. 411** provides in substance that jurors in a federal court are to have the qualifications of jurors in the highest court of the state. Here, in the case at bar, there was no discrimination anywhere depriving Mrs. Muirhead of any constitutional right.

Petitioner cites **Brookhart vs. Janis, 381 U.S. 1, 86 S. Ct. 1245** the Supreme Court held that where the record did not establish that defendant, who emphasized in open court that he was not pleading guilty, had intelligently and knowingly waived right to confront and cross-examine witnesses, although his attorney agreed to "prima facie trial" which was practical equivalent of guilty plea and in which defendant did not have right to confrontation and cross examination.

ARGUMENT

Answering petitioner's argument that the Judgment below ignores petitioner's rights under the Fourteenth Amendment.

The petitioner was asked the question while on the witness stand:

> Q. Did you receive a written memorandum or request from the Hinds County Democratic Executive Committee asking you to fill out an application?
>
> A. Yes I did. (R 48)
>
> Q. Now look that over and see if that is the kind of form you received?
>
> A. Yes it is." (R 49)
>
> "By Mr. Barnett:
>
> We ask that this be marked as an exhibit to the testimony of Senator Muirhead. Respondents Exhibit "A" (R 49)

Respondents exhibit A in its last paragraph reads:

> "I have not qualified with any other party to be a candidate for the office I seek in the August Democratic Primary and I have fully complied with and have not violated the requirements of Section 3107-5, misrepresentation to party membership."

This certainly put this petitioner on notice of the provisions of Section 3107-5 which, in the part thereof applicable here reads:

> ". . . and such person has not been in accord with such political party holding such primary within two preceding years, or any part thereof such person shall be barred from participating in such primary. . ."

"The law imputes knowledge when opportunity and interest combined with reasonable care would necessarily

impart it. **Booth Fisheries Corporation vs. Coe, 114F2d462, 72 app D.C. 195, Certrorari derived 61 S. Ct. 72, 311 U.S. 691, 85 L. Ed. 447** – "Actual knowledge consists not only of what one certainly knows, but also consists of information which he might obtain by investigating facts which he does know and which imposes on him duty to investigate." **Smith vs. Pacific Mutual Life Insurance Company, 192 F 2d 248.**

Petitioner's attention was called by such questionnaire to Section 3107-5 of the code and informed her that since she had been a Republican for two years, she was barred from being a Democratic candidate. She needed no further notice that her right for her name to be placed on the ballot had been forbidden and was barred because according to her own statement under oath she has been a Republican for two years. She did receive official notice that she was barred as a Democratic candidate and was officially notified by Section 3107-5 that she had no right to have her name placed on the ballot, and she knew this and did not sign and return the application.

The Supreme Court of Mississippi held that **Section 3105 Code of 1942,** and in effect on November 1, 1964, gave the Hinds County Democratic Executive Committee power to determine whose name should appear on the party ballot. (PA-7) of Petition for Certrorari. This clearly establishes that the Supreme Court of Mississippi did not ignore or deprive petitioner's rights under the Fourteenth Amendment.

B. Now answering Petitioner's argument under point "B" that the Supreme Court ignored the Federal Voting Rights Act and an injunction restraining Mississippi from making any changes in its election procedures from those in effect in 1964.

In answering let us say that the Supreme Court did not ignore the Federal Voting Rights Acts nor did it ignore

the injunction restraining Mississippi from making any changes in its election procedures from those in effect on November 1, 1964.

It is true that the Legislature had in 1970 repealed sections 3105 and 3107.5 but under **Evers et al vs. State Board of Election Commissioners et al, 327 Fed. Supp. 640,** the U.S. District Court held:

> "The plaintiffs are entitled to an immediate injunction against defendants in their official capacities restraining any enforcement of House Bills 362 and 363 of the Mississippi Legislation 1970 Regular Session, and requiring the immediate pending general elections to be held under the laws of the State of Mississippi which were in force and effect on November 1, 1964."

Mrs. Muirhead is a white lady and she received notice from the Respondents that her name would not be on the Democratic ballot. At page 36 of the record she testified:

> "Q. Were you at any time officially notified by the Hinds County Democratic Executive Committee that your right to have your name placed on the ballot had been challenged?
>
> A. No sir.
>
> Q. The only notice you had was through a telephone conversation?
>
> A. Yes." (R 36)

Then in her letter to the chairman of the Hinds County Democratic Executive Committee, dated June 23, 1971, Mrs. Muirhead stated:

> "Since I will not be on the August ballot, would you kindly return my $15.00?" (R 39)

It is clear from the record that there was no concealment by the Committee, no ignoring of the Federal Voting

Rights Act, and no ignoring of Petitioner's rights under the Fourteenth Amendment.

C. Now answering petitioner's argument that the Mississippi Supreme Court ruled that petitioner waived her constitutional rights, petitioner asserts that she had no knowledge or notice and thus did not waive her right to due process.

In response let us say that the questionaire sent to petitioner expressly asked her if she had complied with Section 3107.5 which barred her as a candidate according to her own testimony as set out above and she was thus given notice that she was not acceptable as a candidate. She also was given notice that she had been challenged and on page 39, she stated in her letter to the committee that she knew on June 23, 1971, that her name would not be on the ballot. What further notice did the law require? She had full knowledge on June 19, 1971, that her name would not be on the Democratic ballot when she executed her Corrupt Practice Act affidavit. (R 56).

The decision of the Supreme Court of Mississippi has decided this case in full accord with applicable decisions of this Court and under Rule 19, a Writ of Certiorari will not be granted.

We refer the Court to Rule 19 of this Court, where it is declared that a Writ of Certiorari is not a matter of right but of sound judicial discretion and will be granted only where there are special and important reasons therefor.

The facts are that the primary election was held on August 3, 1971, and Mrs. Muirhead was defeated.

CONCLUSION

Respondent respectfully submits that the record in this case reflects that Mrs. Muirhead, a white lady lawyer, knew that she had been affiliated with the Republican party for the preceding two years, and so admitted on the witness stand and also knew that she was barred by Section 3107-5 from having her name placed on the ballot. She was not denied due process of law at any time or in any manner.

Her case was heard and decided by the Supreme Court of Mississippi in such manner as the settled maximums of the law permit and sanction, and under such safeguards for the protection of individual rights as those maximums prescribe for the class of cases to which this case belongs. Search the record, as we may, and no instance of lack of due process may be found.

Respectfully,

HINDS COUNTY DEMOCRATIC EXECUTIVE COMMITTEE, RESPONDENTS

BY: Malcolm B. Montgomery

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APPENDIX A

Mississippi Code of 1942, Section 3105, Mode of nominating state, district county and county district officers:

"All nominations for state, district, county and county district officers made by the different parties of this state, shall be made by primary elections. All primary elections shall be governed and regulated by the elections laws of the state in force at the time of the primary election is held, except as herein provided. The county executive committee at such primaries shall discharge the functions imposed upon the county election commissioners, except as to revising the registration and poll books and shall be subject to all the penalties to which county election commissioners are subject. The primary election officers appointed by the executive committee of the party shall have the powers and perform the duties, where not otherwise provided, required of such officers in a general election, and any and every act or omission which by law is an offense when committed on or about, or in respect to such general elections, shall be an offense if committed in or about or in respect to a primary election; and the same shall be indictable and punishable in the same way as if the election was a general election for the election of state and county officers except as specially modified or otherwise provided in this chapter."

Mississippi Code of 1942, Section 3107-5, Misrepresentation as to party membership:

"If any person shall claim, or represent himself to be a member of a primary political party during any primary election campaign or during any primary election when in fact such person is not eligible under the laws of this state to participate in such primary held by such political party and such person does

not intend to support the nominations to be made at such primary election of such political party and such person has not been in accord with such political party holding such primary within the two preceding years, or any part thereof, such person shall be barred from participating in such primary, and in addition to such other measures or penalties provided by law, may be enjoined therefrom, upon application to the courts by any person or persons, political party, official or representative of such political party, aggrieved thereby."